



FEDERAL MARITIME COMMISSION

46 CFR PART 503

DOCKET NO. 16-18

RIN: 3072-AC66

Amendments to Regulations Governing Access to Commission Information and Records; Freedom of Information Act

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations for processing requests for information and records under the Freedom of Information Act (FOIA). The regulations are being revised to incorporate changes brought by amendments to the FOIA under the FOIA Improvement Act of 2016. The Act requires agencies to review their FOIA regulations and issue regulations implementing the amendments no later than 180 days after enactment.

DATES: This rule is effective January 30, 2017.

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SUPPLEMENTARY INFORMATION: On June 30, 2016, the President signed into law the FOIA Improvement Act of 2016. The Act prescribes a range of procedural requirements that affect the Commission's FOIA regulations, and which this final rule implements, including requirements that the Commission:

- provide publically available documents and its FOIA Annual Reports in an electronic format;

- provide FOIA requesters the right to seek dispute resolution services from the Commission's FOIA Public Liaison and/or the Office of Government Information Services during the FOIA process;
- provide a minimum of 90 days for FOIA requesters to file an administrative appeal; and
- not apply the deliberative process privilege to records created 25 years or more before the date on which the records were requested.

Regulatory Analysis and Notices

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities and prepare an initial regulatory flexibility analysis, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule will affect only persons who file FOIA requests, and therefore, the Commission certifies that this final rule will not have a significant or negative economic impacts on a substantial number of small entities.

Paperwork Reduction Act (PRA)

The Paperwork Reduction Act of 1995 requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before making most requests for information if the agency is requesting information from more than ten persons. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the proposed rulemaking. 5 CFR 1320.11. This final rule does not impose any collections of information, as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

National Environmental Policy Act (NEPA)

This final rule will have no physical impact upon the environment, and therefore, will not require any further review under NEPA.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.

List of Subjects

46 CFR Part 503

Administrative practices and procedures, Archives and records, Classified information, Confidential business information, Freedom of information, Information, Privacy, Records, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set forth in the preamble, the Federal Maritime Commission amends 46 CFR part 503 as follows:

PART 503 – PUBLIC INFORMATION

1. The authority citation for part 503 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 13526, 75 FR 707, 3 CFR, 2010 Comp., p. 298.

Subpart C – Records, information and materials generally available to the public without resort to Freedom of Information Act procedures

2. Amend § 503.21 by revising paragraphs (a) introductory text and (c) introductory text to read as follows:

§503.21 Mandatory public records.

(a) The Commission, as required by the Freedom of Information Act, 5 U.S.C. 552, is responsible for determining which of its records must be made publicly available, for identifying additional records of interest to the public that are appropriate for public disclosure, for posting and indexing such records, and for reviewing and updating posted records and indices on an ongoing basis. The Commission makes the following materials available for public inspection in electronic format on its website at *www.fmc.gov*:

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(c) The Commission maintains and makes available for public inspection in an electronic format, a current log or index providing identifying information for the public as to any matter which is issued, adopted, or promulgated, and which is required by paragraph (a) of this section to be made available or published.

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Subpart D – Requests for records under the Freedom of Information Act

3. Amend § 503.32 by revising paragraphs (a)(1) and (2), (a)(3)(i)(B), and (b)(3) to read as follows:

§503.32 Procedures for responding to requests made under the Freedom of Information Act.

(a) * * *

(1) Such determination shall be made by the Secretary within twenty (20) business days after receipt of such request, except as provided in paragraphs (b) and (e)(4) of this section, and the Secretary shall immediately notify the requester of:

(i) Such determination and the reasons therefor;

(ii) The right of such person to seek assistance from the agency's FOIA Public Liaison ; and

(iii) In the case of an adverse determination, the right of such requester to appeal to the Chairman no less than 90 days after the date of such adverse determination, and the right of such requester to seek dispute resolution services from the agency's FOIA Public Liaison or the Office of Government Information Services.

(2) Upon granting a request, the Secretary shall promptly make records available to the requestor. Upon denial of such a request the Secretary shall promptly notify the requestor of the determination, explain the reason for denial, give an estimate of the volume of matter denied, and set forth the names and titles or positions of each person responsible for the denial of the request.

(3)(i) * * *

(B) Be filed not later than 90 days following receipt of notification of full or partial denial of records requested.

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(b) * * *

(3) If the time limit is extended as prescribed under this section, and the request cannot be processed within the extended time limit, the Secretary shall notify the requestor, and either provide the requestor with an opportunity to limit the scope of the request so that it may be processed within the time limit, or provide the requestor an opportunity to arrange with the Secretary an alternative time frame for processing the request or a modified request. To aid the requester, the Commission will make available its FOIA Public Liaison, who shall assist in the resolution of any dispute between the requester and the Commission, and notify the requester of

the right of the requester to seek dispute resolution services from the Office of Government Information Services.

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4. Amend § 503.33 by revising paragraph (a)(5) and adding paragraphs (a)(8) and (9) to read as follows:

§503.33 Exceptions to availability of records.

(a) * * *

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the Commission, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

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(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

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5. Amend § 503.34 by revising paragraph (b) to read as follows:

§503.34 Annual report of public information request activity.

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(b) Each such report shall be made available to the public in electronic format.

By the Commission.

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Billing code: 6731-AA

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